sary for the applicants to undergo treatment and rehabilitation at the Centre under section 33(2) of the Act. What is required in the reports, it was said, are the symptoms manifested in the applicants, the diagnosis made of them and other clinical facts for the Director to exercise his mind that it was necessary for the applicants to be admitted to the Centre. It was this submission that was acceded to by Choor Singh J. and would have been rejected by Chua J. that we now have to consider.

The issue is one of construction of section 33(2) of the Act. The key word in the subsection that has to be construed is "result". The rule of construction we apply is the elementary rule that words in a statute must be given their ordinary and natural meaning.

In the context of the subsection, on a plain reading of it, the meaning of "result" is the effect or outcome of the medical examination or observation, or, in the case of a urine test, its effect or outcome. It is clear to us that the Legislature has not required of the Government medical officer or a Scientific Officer of the Department of Scientific Services to furnish the Director with detailed facts and analysis of his examination, observation or test. If that had been the intention of the Legislature, it would not have used the clear and precise word "result" in the subsection.

The result of the medical examination of each of the three applicants was that there were "definite clinical evidence of drug withdrawal syndrome consistent with heroin addiction". It was a finding of a medical fact. The Government medical officer then gave his opinion that the applicants were drug addicts. This finding of the Government medical officer was not challenged by any of the applicants. It is also accepted as a finding by the medical practitioner who has filed affidavits for the applicants. In our judgment in the absence of any other finding before the Director he was entitled to accept the result of the medical examinations. The Director had said in his affidavits that in each case he accepted the finding as a fact. As a lay man, we are of the view, he is entitled to be guided by the findings of medical and scientific facts, the sufficiency of which is a matter only for the Director.

Finally, there is the word "appears" in the subsection. It is obviously there for the purpose of making the Director the sole judge on the question whether it is necessary for any person to undergo treatment and rehabilitation at an approved institution. (See: *Robinson* v. *Sunderland Corporation*,[2] *per* Channell J. at page 757). In our judgment, so long as the Director acts fairly, in good faith and follows properly the procedure set out in section 33(1) and (2) of the Act, it is not for the courts to adjudicate on matters which the Legislature has enjoined the Director to decide.

For these reasons we held that the submission acceded to by Choor Singh J. and relied again before us at the hearing was without merit and dismissed the applications.

Applications dismissed.

Solicitors: *J.B. Jeyaretnam & Co.*

MALAYSIAN REPORTS

KOH KIM CHAI v. ASIA COMMERCIAL BANKING CORPORATION LIMITED

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & Abdul Hamid J.) February 3 & June 24, 1980]

[Johore Bahru — Federal Court Civil Appeal No. 4 of 1979]

Banking — Banking business — Whether foreign bank acquiring and accepting charges of land in Malaysia conducting banking business in Malaysia — Banking Act, 1973, ss. 2 & 3.

Contract — Overdraft facilities given by bank in Singapore — Guarantee — Charges of land in Malaysia — Whether application can be made for an order for sale of land — Whether agreement unlawful — Exchange Control Act, 1953, s. 2 — Contracts Act, 1950, s. 24.

The respondent was a bank carrying on business in Singapore. The appellant had agreed to charge his land in Malaysia to the bank as a guarantee for overdraft facilities given to the bank's customers. No payment having been made, the respondent applied for an order for sale of the land by public auction. The appellant argued that the respondent had flouted the Banking Act, 1973 and that by requiring and accepting charges of Malaysian land to secure loans and by seeking to enforce the security the respondent was carrying on banking business in Malaysia without a licence. The learned trial judge made an order for the sale of the land. The appellant appealed.

Held: (1) the transaction of acquiring and accepting charges of land in Malaysia could not be said to come within the ambit of banking business within sections 2 and 3 of the Banking Act, 1973;

(2) charges of land did not come within the meaning of "securities" in section 2 of the Exchange Control Act, 1953;

(3) the learned trial judge was right in ordering the sale of the land by public auction.

Cases referred to:-

(1) *Bank of China* v. *Lee Kee Pin* [1961] M.L.J. 40.

(2) *Bank of China* v. *Chew Kean Kor* [1963] M.L.J. 41.

(3) *Vacher & Sons Ltd.* v. *London Society of Compositors* [1913] A.C. 107, 127.

(4) *Theophile* v. *Solicitor-General* [1950] A.C. 186, 201; [1950] 1 All E.R. 405.

(5) *In re Reynolds* [1915] 2 K.B. 186, 189.

(6) *Rawlinson* v. *Pearson* 106 E.R. 1139, 1140.

FEDERAL COURT.

V.C. George (*K.S. Narayanan* with him) for the appellant.

U. Masacorale (*Lim Cheun Ren* with him) for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the Court): This appeal is against the decision of the learned judge ordering the sale by public auction of that piece of land comprised in Grant 23940, Lot 2605 in the mukim of Senai-Kulai containing an area of 53 acres 0 rood 30 poles. Three cases on the same grounds of appeal are involved. For convenience, one case was heard and the decision would be binding on the other two.

Appellant is the registered owner of the land. Respondent is a bank carrying on business in Singapore. Appellant agreed to charge his land in favour of the bank as a guarantee for overdraft facilities given to two Malaysian companies and a Singapore company who were the bank's customers. Three charges were

effected on May 23, 1973. The first charge relates to overdraft facilities to Kimwood Trading Company up to a limit of $400,000 with interest at the rate of 10.8 per centum. The second charge relates to similar facilities to Overseas Lumber Berhad up to a limit of $500,000 with interest at same rate. The third charge (with which we are concerned in this appeal) relates to similar facilities to Overseas Lumber Private Limited of 20A, Robinson Road, Singapore up to a limit of $350,000 with interest at the same rate. As at January 9, 1975 the amount due on the third charge, i.e. principal and interest was $420,328.63. Under the terms of the charge the amount owing is payable on demand. A demand in Form 16E under the National Land Code was made on August 22, 1976 for payment of the amount due. No payment was made. So, by an Originating Summons dated June 7, 1977 appellant sought for an order for the sale of the land by public auction.

As regards the other two charges the amount due on January 9, 1975 on the first charge was $499,463.26 and on the second charge $94,721.55. Similar applications were made for the sale of the land by public auction.

It is the contention of appellant that respondent has flouted the Banking Act, 1973 and the Moneylenders Ordinance. Respondent is a Singapore bank and not licensed to carry on banking business in Malaysia under section 3 of the Banking Act, 1973. Anything the bank does which is related or incidental to creating advances to its customers is carrying on banking business. The making of advances to customers and receiving payment are interdependent acts forming an essential part of banking business. The obtaining of security and enforcement of security in respect of the advance made are part of the process of advancement. He, therefore, argued that by requiring and accepting charges of Malaysian land to secure the loan and by seeking to enforce the security respondent was carrying on banking business in Malaysia.

In his reply respondent pointed out that the main contract was the contract of loan between the bank and the borrower. The proper law of contract is that of Singapore. There is nothing to show any contravention of Singapore law. To secure the loan, a third party (the appellant), executed a charge in favour of the bank of his property in Malaysia. By paragraph 5 of his affidavit appellant stated, *inter alia*, that "I gave in and allowed them to charge my property for the overdraft facilities already granted and additional facilities up to the limits stated in the purported First, Second and Third Charges". Appellant did not pursue the contention which he raised in the lower court that the charges were bad by reason of his having executed them when the three companies had in fact already received the overdrafts. This argument was rightly rejected by the learned judge as there was in fact adequate consideration when appellant executed the charges. They were to secure the overdrafts that had been granted to his companies.

The loan was given to the borrower in Singapore. Other than taking a charge of land in Malaysia there was no evidence that respondent had transacted any banking business in Malaysia. The property does not belong to the borrower but appellant who is a third party. It was submitted that the mere taking of a charge of property in Malaysia was not carrying on a banking business. Should an individual from Singapore take such a charge there would be no breach. The fact that respondent which happens to be a bank took such a charge should make no difference. Merely seeking to enforce a charge is also not carrying on banking business. There does not seem to be any provision in any law expressly forbidding a charge to a foreign person.

That every contract is in general to be regulated by the law of the country in which it is made is expressed by the Latin term *lex loci contractus*. Where a contract made in one country is to be performed in another, then the law to be applied is that of the country where the contract is to be performed. This is expressed by the Latin term *lex loci solutionis*. The borrower and the guarantor are two different entities, each entering a separate contract of a different nature.

The appeal is primarily concerned with the proper construction of statutes. It is a well recognised principle in the interpretation of statutes that a statute must be looked at as a whole. Before a bank can transact banking business either in Malaysia or Singapore it must obtain a licence. It seems that a bank operating in Malaysia but which was subsequently refused a licence could still recover debts due to it as proceedings to recover debts did not amount to carrying on banking business, contrary to section 3 of the Banking Ordinance, 1958. See *Bank of China* v. *Lee Kee Pin*[1] and *Bank of China* v. *Chew Kean Kor.*[2] In *Bank of China* v. *Lee Kee Pin*[1] Rigby J., after referring to the facts and the relevant provisions of the Banking Ordinance, 1958 stated:—

> "... It is said that for this court to entertain the action would be to disobey the Legislature and — to quote the words of Lord Shaw of Dunfermline in the case of *Vacher & Sons, Ltd.* v. *London Society of Compositors*[3] — 'would on the part of the judiciary constitute a usurpation'. It was suggested that if the plaintiffs had outstanding debts due to them after the transitional period of three months had elapsed then their remedy might well be to apply to the court, under the Companies Ordinance, for the Bank to be wound up and a receiver appointed to collect the debts due.
>
> In support of his argument that in trying to recover money it had lent to its clients in the course of its business the Bank was carrying on business, Mr. B.K. Das, for the applicant, cited a number of authorities:- *Theophile* v. *Solicitor-General*,[4] *In re Reynolds*,[5] and *Rawlinson* v. *Pearson*.[6]
>
> As a general proposition I entirely accept the conclusion to be drawn from these cases that, generally speaking, a person or firm does not cease to carry on business merely because 'the shutters may have been put up', but continues until the sums due are collected and all debts paid. But the words 'bank' and 'banking business are specifically defined in the Banking Ordinance, 1958. 'Bank' means 'any person who carries on banking business'; and 'banking business' means 'the business of receiving money on current or deposit account, paying and collecting cheques drawn by or paid in by customers, and making advances to customers'. Paragraph 4 of the defendant's affidavit in support of this application states:—
>
> '4. By a notice of action dated January 23, 1959 the plaintiffs' solicitors demanded payment of certain sums alleged to be due by me on overdraft account and stated: 'Our clients regret having to take this action but would inform you that under the provisions of the Banking Ordinance, 1958, they have been notified by Government to wind-up their business in terms thereof.'
>
> In my view, in seeking to recover the moneys due to them

the plaintiffs were and are not 'transacting a banking business' within the meaning of the prohibition contained in section 3 and within the definition of 'banking business' as contained in the Ordinance itself. As I understand it, the mischief which the Ordinance seeks to avert is to prevent a person or company carrying on banking business in this country without being in possession of the requisite capital paid up in this country. To extend the meaning of the words 'transacting banking business' so as to place a prohibition upon the plaintiffs taking action, in the course of winding-up their business, to recover overdrafts allegedly due to them, would be, in my view, to impose upon them an intolerable hardship and injustice not justified by the plain meaning of the words 'banking business' as defined in the Ordinance."

The result is that now section 12 of the Banking Act, 1973 allows a bank whose licence has been revoked to carry on such business as may be approved for winding up of his banking business which includes enforcing outstanding claims.

The Banking Ordinance, 1958 defines "banking business" to mean "the business of receiving money on current account or deposit account, paying and collecting cheques drawn by or paid in by customers, and making advances to customers". This definition has now been replaced by section 2 of the Banking Act, 1973 which provides as follows:—

"'banking business' means the business of receiving money on current or deposit account, paying and collecting cheques drawn by or paid in by customers, and making advances to customers and includes *such other business as the Central Bank, with the approval of the Minister, may prescribe for the purposes of this Act.*"

Section 2 also defines "bank" to mean:—

"any person who carries on banking business."

It will be seen that this definition is very wide and may include individual partnership, association, society, company and other organisations. However, section 3(1) restricts the definition by providing that:—

"Banking business shall not be transacted in the Federation except by a corporation which is in the possession of a licence in writing from the Minister authorizing it to do so."

The section clearly permits transaction of banking business by a licensed corporation. The crucial question is whether the respondent, in acquiring and accepting charge of Malaysia's land, was conducting banking business. We are of the view that such transaction could not be said to come within the ambit of section 3 of the Banking Act, 1973. It lacks the essential characteristic of banking business as principal part of the business of a bank. "Banking business" as defined under section 2 must, we think, be construed to embrace predominating business of banking. For this purpose it will be observed that —

"A 'banker' is an individual, partnership or corporation, whose sole or predominating business is banking, that is the receipt of money on current or deposit account and the payment of cheques drawn by and the collection of cheques paid in by a customer. The judicial recognition of the banker's lien implies the inclusion in banking business of the making of advances or the granting of overdrafts to customers."
(2 *Halsbury's* Laws (3rd Edn.) 150, 151).

Section 24 of the Contract Act, 1950 provides that:—

"The consideration or object of an agreement is lawful, unless —

(a) it is forbidden by law; or

....

(e) the court regards it as immoral, or opposed to public policy."

Every agreement of which the object or consideration is unlawful is void. Appellant says the contract should not be allowed to be enforced because it also contravenes the provisions of the Exchange Control Act, 1953 (Act 17) (Revised — 1969). "Securities" is defined in section 2 to mean shares, stocks, bonds, notes (other than promissory notes), debentures, debenture stock, units under a trust scheme and shares in an oil royalty. These provisions relate to securities and have been dealt with by the learned judge who stated that charges of land did not come within the meaning of "securities" as defined in section 2. Suffice it to say that we agree with his interpretation.

At the time of the loan transaction there was no restriction as to the movement of moneys between Singapore and Malaysia. It was only in 1974 when Singapore ceased to be regarded as a scheduled territory that any transfer of money exceeding $1,000 would require approval of the Controller. Furthermore, appellant was not a customer of the bank but merely a guarantor for his companies. Does the fact that a Singapore bank took from a guarantor a charge of land in Malaysia necessarily mean that it was carrying on banking business in Malaysia, contrary to the Banking Act? This will be so regarded if such act falls within those words underlined in the definition of banking business, that is, "such other business as the Central Bank with the approval of the Minister may prescribe for the purposes of this Act". Appellant has not informed us the nature of "such other business". It is a matter of some difficulty. Thus, Myint Soe in "A Source Book of Banking Law in Singapore and Malaysia" at page 10 asks: "Does it mean business in addition to the business already mentioned in the definition, or does it mean "business" which may not include those already mentioned in the definition, but is "prescribed" by the relevant authority?". We are not told what are such other business "prescribed" for the purpose of the Act. Another point to note is that there is no provision in the National Land Code preventing a foreigner including a foreign bank from effecting a charge of land in Malaysia.

All the contentions before us were made in the lower court. The learned judge considered the points carefully and expressed his views shortly at page 43 of the Appeal Record as follows:—

"I come to the various provisions of law referred to by the respondent which are said to render the charges illegal.

Section 3 of the Banking Act relates to a bank operating in this country. It is not disputed that the applicant was operating as a bank in Singapore. The transaction was good according to Singapore laws. This is what matters. Section 9 of the Banking Act has application to a bank operating here.

Section 5 of the Moneylenders Ordinance, 1951: again this was a transaction outside the country. There is nothing to show that the transaction could be contrary to any equivalent Singapore law. As a bank, the court must presume that it was authorised to lend out money.

Section 9 of the Exchange Control Act does not appear to have any application here. The applicant is seeking the order of the court for the sale of land under the National Land Code on charges which were executed under the Code. The proper provision that seems to operate is paragraph 1 of the Fourth Schedule to the Act, which so far as applicable, provides that it shall be implied in any order of any court in Malaysia that any sum required to be paid by the order to which the provisions of Part III apply shall not be paid

except with the permission of the Controller. It would be a matter for the applicant to get the permission of the Controller before the Senior Assistant Registrar here can make any payment to it from the proceedings of sale."

We are of the opinion that the learned judge was right in ordering the sale of the land by public auction. In making the order the implication is that the learned judge was satisfied that the bank was not carrying on banking business in Malaysia. There is no ground for us to interfere with the order made. We would dismiss the appeal with costs. Deposit to respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *Ng Ek Teong & Partners; Yeow & Chin.*

RE LAW PUONG UNG LEE CHUAN HONG SDN. BHD. v. LAW PUONG UNG

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) & Syed Othman F.J.) May 6 and July 3, 1980]

[Kuching — Federal Court Civil Appeal No. 241 of 1979]

Bankruptcy — Application to set aside bankruptcy notice — Amount claimed no longer owed by debtor.

The respondent in this case had entered into an agreement with Lee Choon Teck, the managing director of the appellant company, to construct 16 houses for Lee Choon Teck. In return the respondent was to get 10 houses. The materials for building the houses were supplied by the appellants who claimed the balance of the price amounting to $238,361.49. The appellant obtained summary judgment against the respondent for the sum of $238,361.49 and interest but it was agreed that there should be no execution on the judgment until the transfer of certain lands and houses to the respondent's purchasers. On transfer of the houses respondent became entitled to the purchase money of $168,300 which together with $97,500 for the three houses sold to Lee Choon Teck, the managing director of the appellant company amounted to $265,800. This sum was more than enough to settle the sum claimed but the appellants alleged that the respondent was indebted to them in the sum of $82,300 which was advanced to him. The appellants therefore claimed that a sum of $76,603.49 being the balance due on the final judgment was due to them and they served a bankruptcy notice on the respondent. The learned trial judge held that the appellants were not entitled to deduct the alleged debt of $82,300 from the purchase price collected by the appellants and he held therefore that the judgment debt had been fully discharged. The appellants appealed.

Held: there was no reason for interfering with the finding of the learned trial judge that there had no prior arrangement for the deduction of the $82,300 from the purchase price and therefore the bankruptcy notice was rightly set aside on the ground that the respondent was no longer owing the appellants the amount claimed.

Case referred to:-

(1) *Lee Ah Thaw & Anor.* v. *Lee Chun Tek* [1978] 1 M.L.J. 173.

HIGH COURT.

J.C. Fong for the debtor.

Ee Poh Teck for the creditor.

Cur. Adv. Vult.

Seah J.: By this Notice of Motion dated September 13, 1979 the debtor, Law Puong Ung applies for an order that the Bankruptcy Notice dated July 11, 1979 be set aside on the ground, *inter alia*, that the debtor is no longer owing the creditor, Lee Chuan Hong Sdn. Bhd., Kuching, Sarawak, the amount claimed in the said Bankruptcy Notice. The brief facts insofar as they are relevant to this application are these:

(a) In C.S. No. K.119/77 the creditor took out a Specially Indorsed Writ of Summons against the debtor claiming the sum of $238,361.49 interest and costs.

(b) On May 15, 1978 it was ordered that leave be granted to the creditor to enter final judgment against the debtor in the sum of $238,361.49 together with interest thereon at the rate of 5% per annum calculated from March 24, 1977 up to the date of judgment and further interest at 6% per annum from the date of judgment until final payment and $300 costs and it was further ordered that there shall be no execution on the said judgment until the transfers of ten parcels of land mentioned in clause 2 of the Agreement to the debtor's purchasers or nominees within thirty days from date hereof have been effected and $42 costs of the application.

(c) On May 26, 1979 it was this day adjudged that the creditor do recover from the debtor the sum of $238,361.49 with interest at 5% per annum from March 24, 1977 to date thereof and further interest at 6% per annum from date of judgment until final payment and $300 costs.

(d) Out of the ten parcels of land it was common ground that the creditor transferred seven lots to the debtor's nominees or purchasers and three lots were resold to the creditor. It was alleged that the creditor received from the debtor's nominees or purchasers a total sum of $168,300 and the value of the three lots resold to the creditor amounted to $97,500. The combined total of the purchase price from the sales of these ten parcels of land would amount to $265,800.

(e) It was alleged that the debtor was indebted to the creditor in the sum of $82,300 and if this debt was taken into account, the debtor would still be indebted to the creditor. When the Bankruptcy Notice was taken out by the creditor, it was alleged the sum of $76,603.49 claimed by the creditor as being the balance due on a final judgment obtained by the creditor against the debtor vide C.S. No. K.119/77. In paragraph 9 of the creditor's affidavit of October 3, 1979 it was alleged that balance of the judgment debt still due and owing by the debtor was $71,773.44 and not $76,603.49 as stated in the Bankruptcy Notice.

(f) On September 7, 1979 a copy of the Bankruptcy Notice was duly served on the debtor. On September 11, 1979 this Notice of Motion was taken by counsel for the debtor and the filing fees were paid on this date.

For the debtor it was submitted that the judgment debt was $238.361.49 plus interest and $342 costs whereas the total purchase price collected and credited from the ten parcels of land amounted to $168,300 and $97,500 making a grand total of $265,800. It was argued that this sum of $265,800 was sufficient to pay off the judgment debt of $238,361.49, interest and costs. It was further contended that at the time of the issue of the Bankruptcy Notice on July 11, 1979